

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

77-6051

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Docket No. 77-6051

MUREL H. BRANCH,

Plaintiff-Appellant. B

-against-

SOCIAL SECURITY ADMINISTRATION, SUPPLEMENTAL
SECURITY INCOME, 1657 Broadway, New York City,
M. STAMLER, B. JUNGMAN, W. LINDEN, R. ROHRS,
THE SALVATION ARMY, THE ANTHONY RESIDENCE, 119
East 29 Street, New York City, HOWARD DANIELS,
AND CANDACE DZIUBA,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPELLANT'S REPLY BRIEF

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

* * * * *

MUREL H. BRANCH,
PLAINTIFF-APPELLANT, :

-v- :

SOCIAL SECURITY ADMINISTRATION/
SUPPLEMENTAL SECURITY INCOME,
1657 Broadway, New York city, et al.,
et al., and
THE SALVATION ARMY/ANTHONY RESIDENCE,
New York City, et al.,
DEFENDANTS-APPELLEES.

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APPELLANT'S BRIEF
IN REPLY TO
BRIEFS OF
APPELLEES

PRELIMINARY STATEMENT

Action in this matter was begun by Appellant in the United States District Court, Southern District to protest and to deny what appeared to her to be unjust and unwarranted allegations that she was deliberately and intentionally attempting to defraud the Government of Social Security funds. In various ways, the Government has used language tending to indicate that she is dishonest, irresponsible, and incompetent, and that she is, and was, trying to evade obligations.

The Salvation Army, as manager of the Anthony Residence, has seemed to be in agreement with the Government view, by reason of its liaison as they term it, or cooperation, in the handling of the affairs of SSI (Supplemental Security Income) and other social security recipients, who live at the residence.

Fraud, obviously, means an attempt, or attempts, to obtain by false statements, money or an equivalent money value, by wrongful means, which belongs to another. Any charge of fraud, to be valid, must be accompanied by definite evidence that, first, there was definite purpose on the part of the accused, so to do; and second, that any proof as to such alleged fraud be substantiated beyond any reasonable doubt.

Upon calling at the office of the Supplemental Security Income Bureau at 1657 Broadway on December 27, 1974, and January 2, 1975, the interviewers (B. Jungman and W. Linden) each respectively asked Murel H. Branch to sign several blank forms, which they later filled in while talking with her, B. Jungman on the first date, W. Linden on the second. Some of the latter forms were filled in by others after she had left their office, with statements purporting to have been made by Miss Branch and signed by her. One such form, dated 12/27 (no year), signed by B. Jungman, carries three different kinds of handwriting: two statements which appear to be in the handwriting of W. Linden dated 1/2/75 with his name after the second: not signed by appellant. This and other documents contained in the appendix of her brief, in section B,- the forms, that is,- had not been seen by Miss Branch until examined in the file of the Hearings and Appeals Board at 250 Broadway on July 20, 1976; duplicate copies were not made available to her until, after two written requests, they reached her in the mail under date of 9/28 and 10/29, 1976. These and others appear in the appendix, and are discussed in the brief. Any statements not in her handwriting and not signed by her, are not her statements.

The reports made out in the SSI office early 1975 were worded according to what their representatives wanted the recipient to say, and thereby make it appear that she was agreeing to an admission of guilt, without her consent. At that time their manner of speaking seemed to Miss Branch to be a form of duress to unsettle her by fear of loss or punishment so as to interfere with any free and voluntary action which should constitute consent,- the threat of imprisonment if she did not comply (on notices of decisions later received, and by counsel for Salvation Army) and loss of funds, aroused her protest. The roundabout comments both to her and in writing seemed to her at the time to show elements of deceit to her detriment. There has been no proof, no sworn statement, by any Government official to substantiate any grounds for a belief by the Government that Miss Branch had any intention of obtaining money by false pretenses. The purpose of the action brought in the District Court, ~~fraud~~ now in the Court of Appeals, is a challenge, if necessary, to prove /

It became immediately apparent to the plaintiff on 12/27/74 and 1/2/75 that the interviewers had jumped to the conclusion that they had a fraud case on their hands, and meant to prove it. The first papers upon which they wrote in her presence contains words and phrases such as

-overpaid and further in debt to the government-

(12/27/74, unknown handwriting, unsigned, appendix page 22, A-2-1, A-2-2)

-so no overpayment will be held against me-

(1/2/76, unknown handwriting, unsigned, appendix page 23, B-3-1, B-3-2, B-3-3)

-claimant is extremely anxious to avoid any

implication of wrongdoing to the point of

excessive scruple, (signed by W. Linden, seems

to be his handwriting; appendix page 26, 27, B-4,

B-5; 1/2/75)

None of these expressions were in wording used by Plaintiff, nor in her handwriting; nor signed by her as being authorized by her. The papers in section "B" of the appendix are all photocopies of documents first examined by her in the office of the Hearings and Appeals Bureau at 250 Broadway, New York City, on July 20, 1976, copies of which were then requested by her from the Newark, New Jersey office; eventually they reached her in two groups by mail on 9/28/76 and 10/29/76, and were reproduced from those copies for the Court of Appeals. The typescripts were added by her for the sake of clarity, and for her comments where deemed necessary. She cannot be responsible for statements which she has not written of her own free will, in her own handwriting and signed by her own hand. Any typewritten communications signed by her will be readily recognizable by their own style. Any other communications purporting to be signed by her in any form whatsoever must be considered as fraudulent, forgeries, or intent to deceive her as to her rights or correct use of information.

Other comments concerning these documents in appendix "B" may be found on pages 17-39 of her brief.

REPLY BRIEF OF MUREL H. BRANCH, Plaintiff-Appellant,
to
BRIEF AND ADDENDUM OF FEDERAL DEFENDANTS-APPELLEES.

Plaintiff-Appellant, Murel H. Branch appeals from the orders of dismissal from the United States District Court for the Southern District of New York, not for the reasons exactly stated in the brief. The three preceding ~~three~~ pages of her reply present the issue of primary importance to her:

That the Federal Defendants took the view from the beginning of 1975 that she schemed, and intended, to defraud the United States Government of funds to which she was not entitled. She contends that the SSI office held to this view and refused to answer her questions on the matter; her letters were ignored.

The statement of the case on page 2 emphasizes the wrong points even though they were incidental to the facts of the case. It was the assumption of fraud by SSI employees, made obvious by them at the start, and which plaintiff-appellant recognized at once, that has brought about the development of this matter. Assumptions are not facts, and she has felt compelled to defend herself against unjust accusations. There is no point in repeating here what has been said many times in papers previously filed in the several offices concerned during the last two and a half years.

The several citations mentioned on pages 3, 4, 5, of the brief had been previously consulted by the plaintiff for her own information and understanding. A discussion of hearings will appear a few pages further on in this reply.

There are errors on pages 5 and 6. By no stretch of the imagination can it be said that a statement purported to have been signed by plaintiff, could possibly be construed as a waiver of any kind for any purpose. As given, it says ^{Because} nothing about anything. To begin with it is not true, at all, ¹ Plaintiff did not ^{write or} sign such a statement. A photocopy of pages 5 and 6 follows this page as page 5, with comments. (page 31 of her brief; p.23,24, 25, her appendix).

A notice of planned adverse action regarding plaintiff's SSI entitlement was issued on April 15, 1975 and an adverse reconsideration determination was issued on November 7, 1975. On December 15, 1975, plaintiff requested a hearing pursuant to 20 C.F.R. § 416.1125. The case was assigned to an administrative law judge and a hearing was scheduled for July 6, 1976. Plaintiff, however, failed to appear for the hearing on that date (GA 28). The hearing was rescheduled three times and on each occasion plaintiff failed to appear or show good cause as to why she could not appear (A 40). In fact, plaintiff refused to appear at the scheduled hearings because of the pendency of this action (A 41). As a result, plaintiff's request for a hearing was dismissed on the ground of abandonment pursuant to 20 C.F.R. § 416.1130.

Although plaintiff was entitled to a continuation of benefits from the date of initial notice of adverse action (April 5, 1975) to the date of issuance of the reconsideration determination (November 7, 1975), payments were discontinued as of the April date. The reason for the discontinuance is that SSA personnel constructed a statement signed by plaintiff on January 12, 1975 as constituting a voluntary waiver of continuation of payments (GA 29).

* 20 C.F.R. § 416.1130 provides as follows:

With the approval of the presiding officer, a request for hearing may also be dismissed upon its abandonment by the party or parties who filed it. A party shall be deemed to have abandoned a request for hearing if neither the party nor his representative appears at the time and place fixed for the hearing and either (a) prior to the time for hearing such party does not show good cause as to why neither he nor his representative can appear; or, (b) within a reasonable period after furnishing of notice to him by the presiding officer to show cause, such party does not show good cause for such failure to appear and failure to notify the presiding officer prior to the time fixed for hearing that he cannot appear.

See page 7 this brief

No waiver mentioned there, nor implied, nor even construed, voluntary or otherwise.

Government offices are closed on Sunday, so of course there could be no official business transacted. (Plaintiff's brief, p. 31)

These words were not written by Miss Branch and were not originally in her handwriting; they were not signed by her. The document in which they appear, as filed in the Bureau of Hearings and Appeals, is not properly reported in the affidavit of Barry L. Powell from which it is taken.

This is NOT A WAIVER. She had nothing TO DO WITH IT.

NO OFFER WAS MADE TO HER, and there was NO discussion at any time.

CALENDAR 1975						
JANUARY						
1	2	3	4	5	6	Sun.
7	8	9	10	11	12	Mon.
13	14	15	16	17	18	Tues.
19	20	21	22	23	24	Wed.
25	26	27	28	29	30	Thur.
31						Fri.
						Sat.
JULY						
1	2	3	4	5	6	Sun.
7	8	9	10	11	12	Mon.
13	14	15	16	17	18	Tues.
19	20	21	22	23	24	Wed.
25	26	27	28	29	30	Thur.
31						Fri.
						Sat.

I realize that I will no longer be entitled to SSI payments until my bank balance falls below \$1,500. I further realize that when my SSI payments resume, they will be reduced to allow for the fact that I am now receiving Social Security benefits. I wish to have these changes applied immediately so that no overpayment will be held against me. (A 23; GA 27). (A 13, 24, 25)

27). * That statement provided in pertinent parts as follows: For defendant to say: that statement takes it out of the context in which it had originally appeared,

and ignores entirely plaintiff's signed statement which appears below it and says something quite different. The typescript of that page appears on A24, and the second page of the document itself on A25.

In its entirety that statement is false, and a gross misrepresentation of fact.

* Notwithstanding this waiver and subsequent to the filing of this action in the District Court, the SSA offered to issue retroactive benefits to plaintiff for the period in question (May to November, 1975) with the proviso that should it ultimately be determined that plaintiff was not eligible for those benefits, these benefits would be treated as an overpayment (GA 28). Should plaintiff choose to pursue her administrative remedies regarding the issue of entitlement, the offer still stands.

sue Presented

part correctly present the Govern-

THIS REPLY BRIEF DOES NOT INTRODUCE NEW MATERIAL. All matter mentioned has been previously touched upon in documents filed with the United States District Court for the Southern District of New York, although perhaps not sufficiently clarified. In preparing her appeal, ^{plaintiff} ₁ has come across errors and omissions in the record of proceedings, particularly in the docket entries, to which she has called attention in her ^{document} ~~letter~~ addressed to the Clerk of the District Court dated August 9, 1977, headed

-Omissions on Docket, Plaintiff's Request for Correction-
with a list attached showing twelve items omitted. A second document dated August 11, 1977, asking for inclusion of responses,

-Plaintiff's Request #2 for Correction-
was addressed like the other, to the Clerk of the District Court, with copies mailed to attorneys of the defendants.

Most important of the omissions was that Barry L. Powell's affidavit was not entered, and that ^{of} ₁ plaintiff's responses in two parts separately mailed, only Part II was entered as a response to an affidavit that had not been entered.

Other errors appear in the federal appellee's brief, which will be pointed out. Suffice it to say that plaintiff has no desire to prolong this action any longer than necessary for her to present and define clearly, the facts of her situation as she knows them; and to defend herself from what she perceives to be unwarranted derogation of character as indicated both by written and spoken accusations related to her actions. The many distortions and omissions that have become evident to her are of considerable concern for this reason.

Plaintiff received several notices of SSI planned action and/or planned decisions over much of 1975. Each of them mentioned a time limit on requests for hearings. Plaintiff responded in each case within those limits, requesting hearing, and also in person on office calls. Each time, interviewers were not ready for hearings. It was not until November 5, 1975, when she called at the office of Mr. Jefferson Woodcox, Assistant Director of the Social Security Administration office at 39 Broadway, New York City, that any action was taken. Mr. Woodcox telephoned, in ^{her} ~~his~~ presence, Mr. Max Stamler at 1657 Broadway, who, it was said, would write her. In an envelope postmarked November 19, 1975, received November 20, 1975, was a letter from Mr. Stamler, enclosing a notice of reconsideration dated November

5, 1975, accompanied by a letter dated November 7, 1975, signed by Robert J. Rohrs; also a form Request for Hearing. The form was mailed in , acknowledged by Mr. Stanler by letter dated February 3, 1976. Hearing was scheduled for July 6, 1976.

By then the District Court case was under way, for plaintiff had felt that the matter should be kept moving. Reply card mailed 7/1/76. Second, Amended Notice of Hearing for September 28, 1976; reply card mailed 9/25/76. Third, Amended Notice of Hearing set for 11/9/76; reply card mailed 11/1/76. Fourth, Amended Notice of Hearing scheduled for 2/8/77; reply card mailed 2/2/77.*

In each reply, Plaintiff stated that the matter was pending in the United States District Court, and in the latter was being moved to the Court of Appeals. In each reply she stated that she was not waiving any rights she might have, and that she was not abandoning any previous claims.** Under date of February 9, 1977, she received an order signed by Edward J. McNeil, Administrative Law Judge, to the effect that, "In view of the fact that this case has been postponed three times, no further requests for postponement will be honored."

Claimant had never requested postponement. The order further stated that claimant had not appeared, and that prior to the time for hearing did not show good cause as to why she could not appear, *(reply card above 2/2/77), and that the matter was considered abandoned.** She had not abandoned it.

It should be noted that at the time of hearings scheduled for 11/9/76 and 2/8/77, the Salvation Army was pursuing action against her in the Civil Court of the City of New York, and that such action would interfere for the time being ~~with other matters, particularly the preparation of her appeal in the Second Circuit.~~ She did not respond to the Order for Dismissal for that reason, considering it more prudent ^{and by,} to have all details handled in their several relationships in ₁ the one court.

Attention should be called to the fact that Appellant has not refused to consider, and to act upon, any response to her request for hearing. She has not failed to take action where it has seemed to be needed, after long waits for information which was not forthcoming.

The Government brief contains a number of errors.

1. The use of SSA when SSI should apply. The Social Security Administration has a number of sub-units, of which Supplemental Security Income is one, with which this action is concerned. The individual employees named are connected with the latter unit, SSI. Under "statement," page 2, line 6, should be SSI employees. Page 3, line 3, - history with SSI not SSA. Same page line 3, last paragraph, - records of SSI not SSA. Page 5, third line from last, SSI personnel, not SSA. Page 7, note, 4th line, records of SSI, not SSA. Page 10, 2nd paragraph, line 6, SSI stated Willingness, not SSA. Page 10, note, 4th line from end, SSI procedures, not SSA's. GA-3, IIIc reported to SSA to SSI. Seven or more in all.

It should be noted that there is a distinction between SSI payments and SSA payments.

2. The Anthony Residence, not shelter. The Government

3. has a great deal to say about plaintiff's "failure to exhaust administrative remedies", and "reconsidered determinations" and "refused to utilize administrative hearing remedy" and "Attempted bypass" and "resources", with alleged blame on her.

4. Is Barry L. Powell's affidavit dated April 22, 1976, the final judgment on these points? What weight do his statements have, when the affidavit was never entered on the docket of the United States District Court for the Southern District of New York? Does that mean that the Government has not even seen plaintiff's answer - in two parts - dated May 15, 1976, and June 15, 1976? Then why is the second part of her answer shown on the docket as an answer to the Powell affidavit, when the affidavit is not even there?

5. Parts I and II should be a sufficient comment on that affidavit, and the errors contained therein.

6. Addendum, Table of Contents, first line, - Complaint It was filed November 2, 1976, page G-1. The complaint could not have on been filed on that date, as it was dated December 5, 1975. 2/11/76.

7. The addendum as such is erroneous, for several reasons, to appear later.

8. Plaintiff has not used, in any of her statements, words that can be claimed she said, either handwritten or typed by her, such as "overpayment", "resource", "waive", "refuse", "abandon".

9. Page GA-2, third paragraph,- the substance of the complaint as given there, is only 1975, as no issues had been raised by SSI until, for all intents and purposes, eligibility for 1975 was to be considered.

10. Preliminary Statement, Note: The Government addendum is unnecessary and repetitious, for the reason that, when filing her Notice of Appeal, the Clerk of the Court of Appeals said it was not necessary for her to include any material that had already appeared in the records of the District Court, because those records would be transferred for their use. Plaintiff had not included copies of the decision of the District Court, motions to dismiss, and affidavits in support, since she had mentioned them all in her Notice. What the Government considers "certain relevant portions of the record," including excerpts from her complaint and amended complaint (as she was instructed by the District Court Clerk to term it), the affidavits of the attorneys and of Barry L. Powell (although that and some other papers were not on the docket), supposedly need not be reviewed, although they are taken out of context.

11. What the Government has omitted, however, is any mention of proceedings in the District Court between April of 1976, and November/December 1976, which would produce any evidence in writing, of cause for dismissal. It appears that there were conferences among attorneys and the Court, for which no official entries were made, and no reports rendered to the plaintiff,, yet which seem to have motivated dismissal of the case.

12. The entire addendum, pages GA-1 to GA-30, including the Powell Affidavit printed verbatim, is needless duplication. Pages 5 and 6 duplicate a part of the Powell affidavit, page GA-27. That leaves eleven pages of brief, three of which, 8,9, 10, citing ten cases, refer to eight of them as concerning exhaustion of administrative remedy - presumably hearings -, and two having to do with disability.

13. There has been no question of disability in this case. The matter of hearings has been discussed on page 7, preceding. Since plaintiff had requested hearings frequently beginning early in 1975 - SSI, "not ready for hearings - and no hearing was scheduled until July 1976, the Government cannot claim that she "failed to exhaust available remedies".

14. Where the Government has attempted to indicate that Miss Branch said, or stated, ^{such and such} it has put into its own words the implication of what it has wished her to say according to the Government's interpretation of insisting upon compliance. It has thus misinterpreted and distorted with the intention of misleading her and putting her in a false light. Any rewording of statements made by an individual, by someone else, another person, can create an untrue impression. The Statement of the Case by the Federal defendants misses some important points, and is ~~th~~ by deceiving in itself, because it takes its grounds on some early premises that had not, and have not, been proven. This will be taken up in the closing argument of this brief.

15. It may be mentioned that the plaintiff has received two copies of the Powell ^{affidavit} ~~brief~~, one in May 1976, the other in July, 1976. As she has said, her answer in two parts was sent in over a year ago. In the reprint of that affidavit in the brief, on page GA-27, repeating pages 5 and 6, he again mentions the date of January 12, 1975, and a quotation, as already discussed on page 5 of this brief. Immediately following this page, as page 11, is a photocopy showing the calendar for January 1975. Enough said?

16. Mr. Powell speaks of reconsiderations. Perhaps he means SSI office interviews with Miss Branch. The SSI interviewers seem to favor the word "conferences". The word "hearing" was used in correspondence and during office calls. During office calls she was not informed that they were "reconsiderations". Notices of Planned Action, or ~~Planned~~ Decision or Determination, or Reconsideration, were sent her without explanation. Notice of Suspension stated that "we have received information that -" without revealing the information; then when she questioned this in an office call, received an answer to the effect that SSI had the right information and that was all that was necessary. She feels that such answers were evasive, and ^{were} intended to deceive her.

Further comments on Barry L. Powell's affidavit will appear in the closing argument of this reply brief.

Affidavit of Barry L. Powell

section 1381(c)(3) as amended by P.L. 94-202) provides for substantial evidence judicial review. Payments will be continued at the prior rate only if re by the recipient within 10 days from the receives notice of a planned action to r terminate. If timely request is made, f continue until such time as a reconsidered issued.

9. The file indicates the following: Ms. Branch's pursuit of administrative entitlement to receive continuing ass reconsidered determination. As earl 1975 Ms. Branch stated, in a letter, her full administrative review of any determ the Social Security Administration regar Other letters repeated this request, incl dated April 17, 1975, one of which specifically requested continuation of payment pending reconsideration. The file indicates that a Notice of Planned Action was issued on April 5, 1975. In addition, another Notice of Planned Action, dated June 2, 1975 is in file. On the other hand, in contradiction to this, Ms. Branch also indicated, at various times, that she was aware that she would not be entitled to receive both SSA-Title II retirement benefits and SSI. On January 12, 1975 she signed a statement which says, among other things: "I realize that I will no longer be entitled to SSI payments until my bank balance falls below \$1,500. I further realize that when my SSI payments resume, they will be reduced to allow for the fact that I am now receiving Social Security benefits. I wish to have these changes applied immediately so that no overpayment will be held against me."

10. A reconsideration was held on August 7, 1975 and a reconsidered determination, dated November 7, 1975, was sent to Ms. Branch, informing her that the

ment of Claimant" -11- written by plaintiff has been disputed by her several times over in papers submitted by her to both courts, including her answer to Powell affidavit. Please see her brief to Court of Appeals, dated June 30, 1977, pages 31-35, and appendix to that appeal, pages 23-25.

CALENDAR 1975

JULY							AUGUST						
Sat.	1	2	3	4	5	6	1	2	3	4	5	6	
Fri.	2	3	4	5	6	7	2	3	4	5	6	7	
Thur.	3	4	5	6	7	8	3	4	5	6	7	8	
Wed.	4	5	6	7	8	9	4	5	6	7	8	9	
Tues.	5	6	7	8	9	10	5	6	7	8	9	10	
Mon.	6	7	8	9	10	11	6	7	8	9	10	11	
Sun.	7	8	9	10	11	12	7	8	9	10	11	12	
	8	9	10	11	12	13	8	9	10	11	12	13	
	9	10	11	12	13	14	9	10	11	12	13	14	
	10	11	12	13	14	15	10	11	12	13	14	15	
	11	12	13	14	15	16	11	12	13	14	15	16	
	12	13	14	15	16	17	12	13	14	15	16	17	
	13	14	15	16	17	18	13	14	15	16	17	18	
	14	15	16	17	18	19	14	15	16	17	18	19	
	15	16	17	18	19	20	15	16	17	18	19	20	
	16	17	18	19	20	21	16	17	18	19	20	21	
	17	18	19	20	21	22	17	18	19	20	21	22	
	18	19	20	21	22	23	18	19	20	21	22	23	
	19	20	21	22	23	24	19	20	21	22	23	24	
	20	21	22	23	24	25	20	21	22	23	24	25	
	21	22	23	24	25	26	21	22	23	24	25	26	
	22	23	24	25	26	27	22	23	24	25	26	27	
	23	24	25	26	27	28	23	24	25	26	27	28	
	24	25	26	27	28	29	24	25	26	27	28	29	
	25	26	27	28	29	30	25	26	27	28	29	30	
	26	27	28	29	30	31	26	27	28	29	30	31	
	27	28	29	30	31		27	28	29	30	31		
	28	29	30	31			28	29	30	31			
	29	30	31				29	30	31				
	30	31					30	31					
	31						31						

This date was Sunday, when no government offices are open.

She did not sign such a statement; see page 5 of this reply brief, where the same statement appears. It is entirely false.

Photocopy of Gov. brief 5 and 6.

Statement shown in Powell affidavit was excerpted from a two-page SSI "Statement of Claimant" form which was not

The Salvation Army/ The Anthony Residence, as one party of the Defendants-Appellees, in its brief, looks at what it calls a "sole issue", the dismissal of the District Court case 76 Civ. 698, with which it was, and is, definitely connected. It has tried all along to ignore, and to disclaim, that the Salvation Army knows anything at all, or has any interest in, or any claim at all upon appellant's "action predicated upon an allegedly wrongful suspension of supplemental social security benefits by defendant Social Security Administration". (p.4) Correction: it should read "supplemental security income payments",- there is a difference between these wordings. Mention is made of "actionable conduct" and "conduct alleged" (p.2⁴₅). This is misinterpretation. Appellant attempted to make statements of fact, not criticism of conduct, as such facts might be related to the elements of the situation. Her appeal is a great deal more than an appeal merely from a court order to dismiss, as shall appear.

Reference in the brief to "Appellant's regular social security benefits --" (footnote *** p4) is out of order. The Government's brief, GA-12, shows relevant differences between SSI and SSA payments. As in the federal brief, the non-federal brief contains a number of errors, among them the misuse of "SSA" when SSI is meant,- p. 2, SSA employees should be SSI employees and "employees of SSA" should be of SSI; p. 3, dealings with SSA instead of SSI; p.11, "with SSA" instead of SSI.

Much of the material in this brief repeats much that also appears in the Government brief, word for word: Page 5 also appears on GA-8,9; page 6 appears on GA-17,18 Summary. Page 7 word for word on GA-26; page 8 on GA-28.

Quotations in the brief purporting to represent the Appellant are taken out of the context of her papers submitted to the District Court (p. 5,6,7,8,9,11). Furthermore, as presented, the attorney in reality is arguing for the appellant's case. The non-federal defendant offers no dispute.

Appellant did not consider the Anthony Residence to be a rest home or a charitable institution; she did not consider herself to be a charity patient. She accepted it as a place to live. In time she learned that it was licensed by the state as a congregate facility, supposedly operated privately by the Salvation Army.

The complaint and amended complaint filed by plaintiff-appellant in the United States District Court for the Southern District of New York purposely included The Salvation Army/ The Anthony Residence as joint defendants with the Social Security Administration/ ^{Supplemental Security Income} ~~Anthony Residence~~ for the reason that:

1. During the year 1975 it had become evident that the Anthony Residence was working closely with the Social Security Income Bureau in monitoring SSI recipients who resided there. Social workers employed by the Salvation Army questioned them. For instance, Candace Dziuba asked Miss Branch to open mail addressed to appellant, in her presence, so she (Mrs. Dziuba) could "help" her with it. Miss Branch had not asked for such help, considering that she was capable of handling her own mail. Another instance: early in 1974, shortly after appellant had begun residence at the Anthony, some SSI checks had been made payable to her, but sent to the Anthony in care of another social worker there, Mrs. Cohn, (they represented overpayments to be returned), as explained in appellant's letter dated September 15 and September 30, 1975, addressed to Mr. T. Hughes. Mrs. Cohn mentioned at that time the Salvation Army liaison she had with the SSI in such matters. A photocopy of this letter appears in appellant's brief to the Court of Appeals, on pages 44 and 45. These are only two of others indicating the working connection between the federal and non-federal agencies which became apparent from time to time.

NOTE: It is not likely that the defendant's attorney did not know of this, in spite of his disclaimer on page 11 that

"Appellant seems to say that the non-federal defendants were in some sort of liason (liaison) arrangement with SSA (should be SSI) and aided in some yet undemonstrated manner, the federal defendants in allegedly denying Appellant SSI ~~statements~~ benefits."

If he believes that, he is thoroughly confused.

The brief submitted by counsel for the Salvation Army omits any denial of statements made by appellant in her papers concerning the appellee. His discussion takes up, for eleven pages, a defense of appellant's position. He does not mention his client's participation behind the ^{States} scenes in attempting to influence the proceedings in the United District Court, as follows:

2. Based on evidence reaching plaintiff-appellant in USDC SDNY, the Salvation Army as one of the defendants in case 76 Civ.698, undertook to arrange trial before the judge, even^{though} the case had not been placed on the calendar for action. After notice of appearance as attorneys for defendants, The Salvation Army et al, dated April 8, 1976,^{filed} with the court as of 4/9/76, - proceeded to act as if they were the prosecuting attorneys in the action, according to the history in papers submitted to Miss Branch, in sequence below:
- a) 4/12/76 carbon copy of letter addressed to Judge Stewart by M.J. MEADOW, confirming telephone conversation that day for conference on 4/20/76, as requested by Salvation Army.
 - a-1) 4/15/76 Letters by appellant to Judge Stewart and M.J. MEADOW objecting to above.
 - b) 4/26/76 carbon copy of letter addressed to Judge Stewart by M.J. MEADOW, stating that conference was held 4/20/76 with counsel for defendants in attendance, with a representative of HEW, who would prepare an affidavit; further conference requested. carbon copies of both MJM letters to Nathaniel L. Gerber, Assistant U.S. attorney; blind carbon copies to Major Howard L. Daniels and Jesse D. Wolff (not identified). (This letter not on firm letterhead; photostat of copy sheet).
 - c) 5/3/76 carbon copy of letter addressed to Judge Stewart by NATHANIEL L. GERBER re conference of 4/20/76, on plain copy paper with no identification except name at end of Nathaniel L. Gerber as Assistant United States Attorney - no letterhead - mentioning enclosure of affidavit of Barry L. Powell to judge; copy of affidavit enclosed with carbon copy of NLG letter in official envelope of Department of Justice; received 5/7/76.
 - c-1) (Affidavit answered in two parts by plaintiff dated 5/14/76 and 6/14/76). (Part II*)#10 on docket.
 - d) 5/6/76 carbon copy of letter addressed to Judge Stewart by M.J. MEADOW re telephone conversation with judge for conference on May 26, 1976; cc NLGerber.
 - e) 7/26/76, 7/27/76 affidavits of NATHANIEL L. GERBER as to intentions to move Court on 8/12/76, with allegations against plaintiff, as to "failure to exhaust". Affidavit incomplete as to facts as of 7/27/76.** #12 on docket.

(* and ** are the only two items in this sequence
(to appear on the District Court docket. No mention
(is made of the other items.

f) According to the docket, this case was never entered on the District Court calendar; neither were the defense attorneys' requests for conference with the judge, except for the affidavits of NATHANIEL L. GERBER dated 7/26 and 7/27/76, entered on the docket. Nor is there any entry on the docket to show that the affidavit of Barry L. Powell was entered on the record.

g) Appellant had never received copies of any motions or other papers, including affidavits, except for 12 above. She had never received any official court order or notice concerning any appearance or decision in which she might have an interest as plaintiff in this action.

/ The three conference dates above /
/ were managed by defense attorneys /
/ with the judge, by themselves; /
/ they did not represent the court. /
/ Their carbon copies of letters /
/ were not orders issued by the /
/ District Court to the plaintiff. /

h) There was no indication in any of the above that Miss Branch needed to appear as a result of arrangements set up by her adversaries in this case. She was within her constitutional and legal rights to make such a choice for herself, as she understood the purposes of the attorneys in so doing.

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3. This sequence concerns what seemed to have been a series of disconnected incidents, as follows:

a) 5/27/76 Phone call from a Mr. Grose saying he was of SSI, had a check for her, instructed to hand her personally and get a receipt. Questioning by plaintiff brought response that check represented SSI payments for six months May 1975 to November 1975. Read receipt to her, - essentially an agreement on possible overpayment. Plaintiff said it was not acceptable.

b) ^{5/28/76} A Mr. Blumenstein telephoned, saying of SSI, had check to deliver personally, would not require receipt; wanted to see her. She refused; check not acceptable. Same as preceding.

NOTE: In effect, these two phone calls from persons unknown to plaintiff, were anonymous because she had never heard of them, and had received nothing in writing to substantiate anything they had said. She had no proof of their statements as to representing SSI.

- c) 9/25/76 Howard Daniels, in his office at his request, told plaintiff that she had not availed herself of SSI money offered to her by representative when "he was here" (Anthony Residence). She said she did not see him. Daniels repeated "he was here". When representatives telephoned her on 5/27 and 5/28 they said they could see her in fifteen minutes, but did not say where they were. She knew that if they were calling from an SSI office they could not get to the Anthony that quickly. They probably phoned from Daniels' office.

So Howard Daniels had secret conferences with SSI representatives on Miss Branch's personal business, and waited four months, withholding for four months, any mention of it to her that he had done so. He said: "You have money".*

In previous talks with her he had professed not to know that she had been receiving SSI checks or had any connection with SSI as a means of paying rent.

- d) 11/3/76 The Salvation Army served notice upon Miss Branch that it was commencing action against her in the Civil Court of the City of New York in the matter of rent, Index No. L&T 116647-76. 11/9/76 Her answer as respondent-tenant to Civil Court. Appearance set for 11/19/76.
- e) 11/22/76 Letter from Social Security Administration, 1515 Broadway, Ms. M. Livrerio, to effect that "Major Howard Daniel of the Salvation Army contacted us on 11/22/76 requesting we send you written verification of the following for your court case with the Salvation Army". It mentioned representatives call of 5/28/76 concerning delivery of check (above 3-b) "Per a district court decision, this check was made available to you as a final decision was not yet made on your pending court case with us".

/Plaintiff had not received any notice of a/
/district court decision in her case. She /
/had not "advised us" (Ms. Livrerio) of any- /
/thing, never having talked with her. /

*NOTE. Major Daniels also stated that at a conference set up in the judge's chambers for August 12, 1976, "one person did not appear". He did not mention plaintiff; plaintiff did not discuss it.

- e) -1) 11/26/76 Plaintiff replied to preceding letter, stating that Major Howard Daniels had no authority to make any statements which would presume to represent her, and that she had never received any certified communication in writing to support the contents of that letter.

He had no business to request any individual or agency to send "written verification" of any kind to her for her court case. The letter of 11/22/76 came six months after the telephone calls of 5/27/76 and 5/28/76.

- f) 11/19/76 Civil Court appearance. Attorney Myron J. MEADOW insisted upon telling the court that the United States District Court case had been dismissed, although plaintiff had not then received court notice of it. Before that:
- g) 10/14/76 carbon copy of letter addressed to Judge Stewart by Attorney MYRON J. MEADOW, referring to conference of August 12/1976, at which motions were made to dismiss the complaint, by all defendants, and for summary judgment. (On attorney's copy letterhead). (He spoke also for United States attorney's motion for same date).
- h) NOTE: The several conferences with Judge Stewart as mentioned, for April, May, and August, were not recorded on the docket; neither were any findings or reports of these conferences recorded. Plaintiff was not advised of any action or decision.
- i) Affidavits filed by The Salvation Army as petitioner-landlord were variously dated September 10, 1976, October 21, 1976, July 20, 1976; and notice of court action Civil Court L&T 116647-76, led to appearance 11/19/76 (f) above. Trial set for 12/29/76.
- j) 11/22/76 Judge Stewart's memorandum to dismiss 76 Civ.698. Copy mailed from United States Department of Justice by Nathaniel L. Gerber, Assistant United States ^{District} Attorney under date of December 1, 1976, to plaintiff.
- k) 11/30/76 Letter by plaintiff to Judge Stewart protesting dismissal.
- l) 12/1/76 Letter from Judge Stewart, - treating plaintiff's letter as motion to reconsider his decision.
- m) 12/8/76 and 12/10/76 to Judge Stewart re reconsideration.
- n) 12/7/76 Salvation Army's opposition to reconsideration.

- o) 12/17/76 Judge Stewart's dismissal after reconsideration.
Mailed from court clerk's office.
- p) Postmarked 11/26/76 Envelope from clerk of the United States District Court, Southern District of New York, addressed to plaintiff at 119 East 29 Street, New York. It contained Notice of Dismissal of court case 76 Civ.698, signed by Judge Stewart, dated November 22, 1976, and was handed to her at the desk of The Anthony Residence at that address. The envelope had been opened and resealed before being handed to her, and still smelled of the glue which had been used in reclosing it. The flap was badly smudged.
- q) postmarked 12/23/76 a second envelope from clerk of the United States District Court, Southern District of New York, addressed to plaintiff at 119 East 29 Street, New York, contained Notice of Dismissal after reconsideration by Judge Stewart, dated December 17, 1976. It was handed to her at the desk of The Anthony Residence at that address, as the other had been. The envelope had also been opened and resealed before being handed to her. Although not smudged as the first, the flap showed wrinkling and evidence of sealant being applied, to reclose.

NOTE: The court had previously been notified that the plaintiff's permanent mail address was, and is, P.O.Box 99, New York 10024. It was obviously an error by the typist that the two pieces of mail p) and q) were addressed to the Anthony Residence.

Under date of December 31, 1976, plaintiff addressed a letter to Mr. Raymond F. Burghardt, Clerk of the United States District Court, reporting these two incidents, enclosing photocopies of the two envelopes, and asking that all mail intended for her be sent to p.o.box 99. She has established this mail address as a result of past experience, to prevent meddling with her personal mail by unauthorized persons.

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4. This sequence concerns the Civil Court action begun by the Salvation Army in Civil Court of the City of New York, L&T 116647-76. It has already been referred to in sequence 3 above, (p.16, d), f), i),(p17).

NOTE. It will be seen that, although the Salvation Army ^{put} its pressure on the District Court to dismiss the case before it, so that the defendant might proceed with eviction action against plaintiff, long in advance of dismissal, the defendant did not wait for actual dismissal. He filed his Civil Court papers November 1, 1976, -d), before the Court signed a dismissal order on November 22, 1976, and before plaintiff had received official notice of the dismissal from the United States Department of Justice dated December 1, 1976. j). (p.17). And before plaintiff would have had a chance to reply.

Plaintiff contends that such overlapping - to begin another action on the same matter before the conclusion of an action which covers it in scope - violates the due process of law, especially in view of the fact that ~~USDC76~~ Civ.698 had not been placed on the court calendar for appearance and trial.

- a) 12/29/76 Continuing Civil Court L&T 116647/76: Appearance with respondent-tenant (plaintiff) and landlord Howard Daniels (Salvation Army) with counsel MYRON J. MEADOW present. Only Howard Daniels sworn in. Plaintiff not asked by court to take stand or to make sworn statement. Apparently judge had been informed beforehand as to amount of judgment he named; plaintiff was not asked to testify. There was no trial.
- b) Plaintiff wrote to administrative judge of Civil Court of New York for information as to how to obtain transcript of 12/29/76 hearing. After numerous delays, it was suggested she ask for stay of judgment. Hearing set for 2/10/77. Denied. Myron J. Meadow interposed memorandum in opposition. She asked about transcript of 12/29/76.
- c) 2/10/77 HOWARD DANIELS, having heard her question of the court that morning, wrote note of unasked-for advice about transcript. (p.50 appendix her brief to Court of Appeals.)

- d) 4/18/77 Notice of Motion to Dismiss Appeal, and
4/21/77 Statement of MYRON J. MEADOW, to the Appellate
Term of the Supreme Court of the State of New York, First
Department, in response to Miss Branch's appeal to that
court, on the ground that the appeal was not timely taken.

MYRON J. MEADOW submitted photocopies of her Notice of
Appeal dated March 28, 1977, and of the envelope in
which it was mailed, postmarked March 29, 1977, in
support of his contention. That may be the only
evidence which he had, but does not explain the delay.

She had made a number of inquiries at the several
offices connected with the Civil Court, as to the proper
procedure for filing an appeal. She was given bits of
information here and there, and sent from one office to
another, and back again, without receiving a coherent
suggestion as to a course she might follow. In general,
there seemed to be a noticeable reluctance on the part
of clerks, to permit her to file pro se, on the plea that
lawyers had to be paid for their work, so as to be reim-
bursed for the cost of their legal education. This caused
many delays to her efforts. Some information given her was
not correct, or inapplicable. Her appeal was denied.

- e) 11/19/76 and 12/29/76 Civil Court action concerned unpaid
rent. From February 1974 to May 1975 - 15 months - she
had paid her rent regularly from SSI funds she had been
receiving. Those funds had been cut off as of May 1, 1975.
The Salvation Army/ Howard Daniels/ Myron J. Meadow - knows
this. They also know that non-payment of rent was caused
by that cut-off, though Howard Daniels has denied (to her)
that he knew anything about SSI payments to her.
- f) 2/23/77 Letter from MYRON J. MEADOW enclosing a "proposal",
to exact payment from her under terms amounting to a two-
year promissory note, under threat of punishment by eviction,
imprisonment, or other penalty, with reference to SSI litiga-
tion. (Appellant's brief, p. 43, 44).
- g) 5/5/77 Appellant was evicted from Anthony Residence.

5. Bureau of Hearings and Appeals. Sequence. Several times, during calls by Appellant at the SSI office, 1657 Broadway, when she mentioned hearings, it was Robert Rohrs who each time stated that they were not ready for hearings. (This in 1975). Beginning on page 6 of this reply brief, through page 7, she notes that hearings had been scheduled, with her comments. To simplify:
- a) 11/5/75 Mr. Woodcox. His telephone call to Mr. Stamler.
 - b) 11/19/75 Letter from Mr. Stamler with enclosures, including form Request for Hearing. Postmarked two weeks after dates shown thereon.
 - c) 11/11/75 Letter to Robert Rohrs (inadvertently November) 12/11/75 Corrected copy of above letter, to December.
 - d) 11/11/75 Form inadvertently showed November; corrected by 12/11/75 photocopied form and letter above, from Appellant.
 - e) 2/3/76 Acknowledgement from Max Stamler of Request for Hearing, and that it had been forwarded to examiner.
 - f) 7/6/76 Hearing set, by notice dated 6/26/76. She replied.
 - g) 9/28/76 Hearing set, by notice dated 9/17/76. She replied.
 - h) 11/9/76 Hearing set, by notice dated 10/22/76. She replied.
 - i) 2/8/77 Hearing set, by notice dated 1/27/77. She replied.
 - j) 2/9/77 Notice of dismissal from Administrative Law Judge of Bureau, on grounds of postponement and abandonment.

In each case, appellant had mailed reply card immediately, stating that issues mentioned were included in pending case in United States Courts; that she would not attend hearings until entire case could be heard by trial judges; that she was not abandoning any claims in the matter; and that she had not waived and was not waiving any rights in the matter. NOTE: The dates of 11/9/76 and 2/8/77 were also in conflict with Civil Court actions at that time, - Salvation Army.

The brief submitted to the Court of Appeals as of August 1, 1977, by Nathaniel L. Gerber, Assistant United States Attorney, with his affidavits dated July 26 and July 27, 1976, overlooks or ignores any developments after his talk with Barbara Spivak who, by that date should have known of the later dates mentioned above, and must have had a report of them from the Bureau.

Barry L. Powell's affidavit was not updated on these points. THEREFORE, it is false to say appellant "failed to exhaust" what is termed "administrative remedies", or that she "has waived her rights", or that she has "abandoned" any claim whatever, or that she has withdrawn or cancelled any statement she has made to the courts. =21=

It took about a year and a half before a date for hearing was set. The SSI often said: "If you have any questions ----". Her questions remained unanswered. That is why she undertook to start court action toward the end of 1975.

MYRON J. MEADOW in his brief, page 8, refers to the Powell affidavit. What did he have to do with it? On each page, from 2 through 11, he says a good deal about SSI. He presents her case.

It appears that he took the initiative on behalf of the Salvation Army to maneuver the District Court case, to manage and influence and direct its course to the end that the Salvation Army would obtain control of any funds Miss Branch might have. His brief does not mention the conferences with Judge Stewart nor what took place at them. He jumps completely from the Powell affidavit to the judge's dismissal order of November 1976. Although "a decision as of August 12, 1976" is mentioned, There is a complete vacuum from April to November so far as concerns any recognition of plaintiff's rights. His omitting to mention his part in the Civil Court action; his "proposal" of February 23, 1977, among others, seem to imply that the District Court operated in a vacuum.

MYRON J. MEADOW's letter of 4/12/76 specifically states that the Salvation Army requested the conference with Judge Stewart. From there on, the evidence available to Miss Branch clearly indicates that the Salvation Army deliberately acted with the SSI Supplemental Security Income office in collusion with the District Court judge. That is the cause of her motion asking the judge to disqualify himself. (#11 on docket, mailed 5/21/76.) There is, due to the foregoing circumstances, indeed a "cognizable cause of Action against the non-federal defendants", in that defendants The Salvation Army, certainly did interfere, behind appellant's back, as it were, with the due process of her case. The most certain evidence of interference WAS Howard Daniels' telephone call of 11/22/76 to the Social Security office at 1515 Broadway. ALSO, despite disclaimers, the Salvation Army/Howard Daniels/Candace Dziuba, and other employees, definitely showed they had a vested interest in Miss Branch's social security funds. A reason for allowing rental arrears to accumulate July 1975 to May 1977, - 22 months, with only token threats. (This reply brief, pages 13-20). His brief is largely a "cover-up".

THIS INTERFERENCE BY THE SALVATION ARMY INCREASED
THE COMPLEXITIES OF THE MATTER, WHICH APPELLANT
CONSIDERED SHOULD BE A PRIVATE AND PERSONAL AFFAIR
BETWEEN HER AND A GOVERNMENT AGENCY ONLY.

=22=

MYRON J. MEADOW exceeds his function in passing judgment on "appellant's styling of caption" as "set apart", etc. His discussion of the Powell affidavit is entirely out of order. His underscoring there (p.6), also (p.5) indicates his interpretation of what is not his case to defend. His phrase, "non-federal defendants have nothing to do with appellant's receipt or suspension of benefits", - "redounded" - nothing! His quotations are taken out of context, those on page 9 of his brief, each omit the final sentence of her statements: "---defraud the Government." Going on: "Their statements to that effect may be seen in documents filed with the Regional Hearings and Appeals Board in the appendix of 58 pages filed with this brief ---- pages 17 through 39, beginning on 12-27-74 onward." (p.1). (p.20) "--- likely to be considered". Going on: "Nearly a year had elapsed before action was entered in the District Court".

(p.40) "--- hearing". He omits her following reference to his Opposition to her comment on conferences with Judge Stewart.

These are examples of faulty reasoning which distort and misrepresent appellant's statements, and amount to cover-up of Salvation Army's aggressive prosecution to discredit her, to derogate her statements and her character, coupled with Howard Daniels' accusations to her face of dishonesty, irresponsibility, immorality, and incompetence. On the whole his brief attempts to avoid the issue of complicity and collusion with the District Court and HEW WHICH, though not originally existing, the Salvation Army by its own confession (Meadow's letter April 12/76) instigated voluntarily, beyond its original connection with the SSI (the reason for its being named jointly with the SSI as defendants.) The several citations are not relevant here.

Comparison of the two briefs submitted by defendants shows considerable agreement between them, by duplication in each of some of same material. As may be seen, the case developed far beyond the original complaint and amended complaint, by action of the Salvation Army to intervene and prevent appellant's right to due process and a fair trial before the Court. The two defendants agreed to act jointly to move for dismissal at conferences they arranged, and "hopefully the plaintiff would appear". Pages 5,6,7,8 (Meadow) duplicate GA-8,9,17,18,26,28.

PRO SE. Among the Rules of Appellate Procedure it is provided that any pro se litigant is to be accorded the same treatment as though he/she had an attorney, and may proceed in forma pauperis, in the interest of substantial justice. Rule 28.

RENT. It is commonly accepted that rent is to be paid for occupied premises to the landlord of that property. In this case the Salvation Army attempted to force its claims by interfering in the SSI matter, knowing very well the true situation, getting in its own way. MEDICAID. No problem. It is automatically begun and ended according to SSI payments.

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Referring now to pages 14, 15, 16 of this reply brief, in sequences 2 and 3, for the period April 1976, through November 1976, the several incidents described appeared to be more or less separate, though the letters on conferences with Judge Stewart were connected. The telephone calls of 5/27/76 and 5/28/76 did not offer any reference points, more than SSI check. The letter of 11/22/76 referred to the calls, and mentioned a decision of 8/12/76 of the district court. In time it became evident to appellant that there was some connection between them, but the incidents themselves did not indicate any continuity, no reference points. A different person functioned each time. As previously reported in her papers to the courts, appellant was left to guess at what was going on; information was withheld from her. If the three conferences with the judge concerned her, the proceedings were kept secret:- the lapses, May 27/28 to September 29, and from May 27/28 to November 22, 1976; and 8/12/76 to 9/29/76 and 8/12/76 to 11/22/76, when all parties knew all about them, indicate intentional concealment. There is a strong suggestion of an intent to deceive appellant in all this. The purpose of a court action is to inform all parties of matters in dispute. Appellant has submitted papers in support of her contentions; defendants have not disputed one of them. She has complied with requests for answers. She has requested information and been ignored.

The judge has not disclosed for the record what his reasons might be for dismissal. There is no record on the docket showing motions made at the conferences, no documents have reached her on these matters from the adversaries. Therefore, she cannot accept the affirmation of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, dated August 1, 1977, that the District Court correctly granted the motion to dismiss. =24=

Although the preceding material in general has appeared in previous documents, an effort is made in this reply brief to present it more coherently, now that the issues have become clarified, and their relationships defined. The facts were given.

A great deal has been said by all parties in this action concerning Barry L. Powell's affidavit very early in this action, - dated April 22, 1976. It contains a number of misrepresentations and distortions, already discussed. (Part II of her reply, 6/14/76; p.5 and 11 of this brief). To repeat the most important part of her rebuttal: SHE DIDNOT, AND HAS NOT, WAIVED ANY OF HER RIGHTS. AND DOES NOT WAIVE THEM. (his section 11). The concluding two sentences of that section, on retroactive SSI payments for the seven months of May through November 1975, by its conditions, implies a threat, - SSI might pay her for seven months, BUT SSI might take it all back at its pleasure. AND THEN accuse her of fraud!

THAT is WHEAT the United States Court actions
are all about - FRAUD!

~~XX~~
- ACCUSATIONS OF FRAUD AGAINST APPELLANT -

That is why she refused a check on 5/27/76 and 5/28/76.
That is why she does not waive her rights in this case. She never
had any intention to defraud anybody, individual or corporate, and
any such accusations are false. - - - - - She knows better.

The offer of an SSI check for seven months was meant by the Government to be its settlement to close the case. In business law, an acceptance of any amount in a matter under dispute, without a final settlement having been agreed upon, is considered to mean, - that no further amount can be claimed.

So in this case. In addition, the Government was leaving the way open for it to claim overpayment and take back, not only any SSI payments it might make, **BUT ALSO** it meant to nullify appellant's Social Security Award to which she was, and is, legitimately entitled under the Social Security law of 1937, by reason of her earnings from which payroll deductions had been made by the Government, for that purpose. Such funds, according to the original law, were to be held **IN TRUST** for the earner until he/she reached age 65 or over, and claimed them. That law did not state that those funds, legally earned, were to be cancelled, by any pretext whatever, by the Government which enacted them. Until recently enacted, Supplemental Security Income was not a condition attached to SSA earnings.

The Powell offer of an SSI payment, besides implying a threat, appeared to be a bribe. It was also an attempt to extort by blackmail,- an attempt to compel her to release and give up her social security monies which she had rightfully earned during her working years. It was also an explicit offer of a "trade-off",---"to issue --- SSI benefits --- (if) not eligible ---result in overpayment in addition to --- already received." What sensible person would agree to such a problematical arrangement as that?

Barry L. Powell; Robert B. Fiske, Jr.; Nathaniel L. Gerber; Myron J. Meadow; The Social Security Administration; The Salvation Army/Howard Daniels;^{Candace Dziuba;} Judge Charles E. Stewart; all seem to have agreed among themselves, although without official court order, to undertake in this manner to tempt Miss Branch by

- bribery - threat - extortion - blackmail - trade-off - to give up what she has rightfully earned by her work.

Can it be that the above-named persons want to perjure themselves by supporting errors, omissions, distortions, etc. in the record as described, and by such questionable tactics?

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The District Attorney, Robert B. Fiske, Jr., in his Notice of Motion dated July 26, 1976, states that plaintiff has failed to exhaust administrative remedies. Has he not read her documents submitted to the District Court since then? nor the brief to the Court of Appeals, ^{covering} the facts of the case? Is he suggesting that appellant was not within her rights in refraining from pressing action in two judicial fields at the same time,- the Bureau of Hearings and the District Court, later the Bureau and the Court of Appeals? Appellant has received no answers from defendants.

Appellant's examination on July 20, 1976, of documents submitted by the SSI office to the Bureau of Hearings and Appeals revealed facts in the records of the SSI, ^{that it} intended from the beginning ~~of the inquiry~~ of the inquiry to determine fraud against her. FIRST. By asking her to sign blank forms, which were later filled in by other persons as containing her statements, many of which were not true, or misrepresentative, or distorted. Most were dated 1/2/75. One dated 12/27/74.

Photocopies of these documents were obtained upon her request from the Bureau, by mail, on 9/28/76 and 10/29/76. Photocopies made of these photocopies appear in her appendix, pages 17-39. Twelve documents in all.

SECOND. Statements written on form in someone else's handwriting; answers to printed questions: (reasons entitled to this payment) "I assumed that the adjustment would be made without the need for action on my part." (2How did you report events which require holding back or stopping payments). "In an SSI redetermination Interview 12/27/74." (When did social security employee first explain to you conditions under which you could receive benefits?) "Never." Answers to questions not in appellant's handwriting. (Ap, p.26). "Claimant is extremely anxious to avoid any implication of wrongdoing to the point of excessive scruple." (Ap, p. 27). 1/2/75.

"She now states that she has had \$2,400 assets since 9/74, but refuses to tell where. She alleges that much of this is from an SSA retroactive payment for several months, which does not agree with MBR. She promised to furnish SSA award letter to clarify situation. (Appellant sent copy to him with letter 2/28/75. He did not reply). I have despaired of getting more cogent information from her" (Linden) (p. 28 Ap.).

(Above, samples of SSI reports showing statements which are questionable).

Copies of the twelve documents received from the Hearings Bureau are a small part of the papers in their file. Most of them are letters she had written SSI. She requested only those she had not seen - these twelve, - eighteen months after they had been written by SSI. It was another two and three months before she received the copies.

If she had been permitted only to look at the file before and during the hearing on July 6, she would have had no opportunity for a fair rebuttal before the administrative judge. He would have made a decision only on the contents of the file before him, as predetermined. In fairness to her, she would need more than the few minutes to study them.

The copies in the appendix bear her typewritten comments on them. (p. 17-39). It would not have been a fair hearing.

Considering the foregoing, can the district attorney and the SSI Bureau chief of staff mean that appellant should actually exhaust herself for another two years to defend herself against false charges of intentional fraud? =27=

THIRD. The SSI Has never explained to Miss Branch what it meant by asking her to "Please put down on paper what you told me about the money entrusted to you by someone overseas. W. Linden, CRT". (p.11a,11b Ap.)

Under date of August 12, 1977, she addressed a letter to Mr. Max Stamler at 1657 Broadway, New York, asking that his office send her a copy of the SSI report showing the source of that idea, under the Freedom of Information Act. She also requested a copy of the report on appellant's interview in the SSI office on 5/21/75 with B. Jungman, in which something was said about putting her through the "third degree". Also requested was a copy or copies of papers sent to Barry L. Powell. A delayed reply was received suggesting that appellant come to an office at 1515 Broadway to look at the file, as they did not know what she was asking for. Appellant answered by saying it was inadvisable for her to come in on account of pending litigation. There has been nothing further.

Under the Freedom of Information Act she has requested similar information, as appropriate to each, from Judge Charles E. Stewart of the U.S. District Court; of the Civil Court of the City of New York (reply, to follow directions previously given, - too late to be timely); Ms. M. Livrerio, Service Representative, Social Security Administration, 1515 Broadway; Appellate Term, New York State Supreme Court, 60 Centre Street, - all of the same date. Only two have responded.

FOURTH. The non-federal defendants have claimed that there is no interrelationship between them and the Supplemental Security Income Bureau; yet their activity suggests a very strong interest. After all, Title XX of the Federal Social Security Act relating to congregate living arrangements for SSI recipients (public Law 94-566) seems to apply to the Anthony Residence. If not interrelated, what is the application, if any, of defendant's footnote *** on page 4 of his brief? The Salvation Army cannot claim the legal right of survivorship to appellant's social security funds. He argues (p.2) that she was "challenging the alleged suspension" of SSI funds; her "challenge is, and remains, to the charge of intentional fraud, to which now, the Salvation Army has become a partner, an interrelationship. It is the charge of "fraud" that is wrongful; the burden of proof is on the accusers altogether.

ARGUMENT

Defendants may or may not have understood that appellant had received the impression from SSI interviewers on December 27, 1974, and January 2, 1975, and following dates that she was being accused of intentional fraud because of social security and SSI payments. The interviewers had no facts on which to base summary conclusions. She felt their suspicions immediately, and felt they were unfair, when she realized that she had been asked to sign blank forms in advance of being filled in, (as she found out later) by other persons professing to speak for her. She objected to their telling her that "You accepted them. You should know better". (The payments).

Her letter of January 6, 1975, three pages, addressed to the Commissioner of Social Security at 1657 Broadway, covered this point. (P.6a,6b,6c Ap.) She was accused of concealment,(?) were not all the records at 1657 Broadway? She felt that she was being misled and hindered from obtaining information,- in other words, that interviewers were concealing from her by a threatening manner information which she should have. She had not "concealed" from SSI what she thought they already knew.

"The word 'conceal', according to the best lexicographers, signifies to withhold or keep secret mental facts from another's knowledge, as well as to hide or secrete physical objects from sight or observation." Gerry v. Dunham, 57 Me, 339. (Black's Law Dictionary, p.360).

Concealed, as --- three conferences with Judge Stewart; proper information as to purpose of telephone calls 5/27/76 and 5/28/76 - Howard Daniels' withholding his knowledge of them until 9/25/76 and, further, telephoning SSI office at 1515 Broadway; and *NO reports on those conferences to appellant. Further, Judge Stewart "had denied appellant fundamental right to fair trial by participating in questioning of witnesses (defense attorneys) and commenting upon evidence ..." (Pickett v. Travelers Indem. Co. C.A. Wisconsin 1960, 283 F.2nd 835) (Rules of Appellate Procedure, Rule 28, Note 1, p.154, General Provisions) (USCA). Other incidents may be found in the documents on file.

Appellant submits that information such as the above has been improperly withheld from her, in particular decisions such as that (supposedly) to dismiss, and others, as provided under Title 5, Government Organization and Employees § 552 (4B), which states:

"(4)(B) On complaint, the district court of the United States in the district in which the complainant resides,--- or in which the agency records are situated ---, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.---The court shall determine the matter --- the burden is on the agency to sustain its action.

"(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown."No reply.

The appellant contends that defendant agency(ies) have improperly withheld its(their) records and have refused to answer her inquiries, as noted previously in this document and others. One example: the "overseas" question, mentioned on p.28 this reply brief; in appendix pages 11a,11b; letter to Max Stamler 2/10/75; other papers. Also seen by her 7/20/76 in file at Hearings office.

If papers filed in court cases become a matter of public record and are public property, as appellant has been informed by the Court of Appeals, Second Circuit, and may be examined by the public, meaning any citizen, then concealed facts withheld by SSI without proof to the accused, might indicate an intent to deceive her. The Hearings Bureau gave her permission to examine their file, which did not indicate any proof of SSI grounds for statements which she considers erroneous. She contends that, as the accused, within the law, burden of proof rests with accusers. The Freedom of Information Act provides further that an individual may request release by an agency of material which, if made available, would protect his/her interests. She has made her requests directly to the agency concerned which, by refusal, requires further steps. Though the Government cannot be sued without its permission, it can make mistakes, and should be willing to correct them, for the record. THREAT has been implied (SSI) or open (Salvation Army); defined as "declaration of intention or determination to inflict punishment, loss, or pain on another, or injure by unlawful act. To menace such as to unsettle the mind of a person, to take away that free and voluntary action which constitutes consent".(Black's Law Dictionary).

BLACKMAIL. Certain documents reaching the appellant from defendants border on attempted blackmail:

1. The request from W. Linden of SSI concerning "overseas" funds. (Ap.11a,11b).

2. Paragraph 11 of Barry L. Powell's affidavit, by reason of conditions contained therein.

3. The telephone calls of 5/27/76 and 5/28/76 from persons unknown to her, offering her a check for a large amount from SSI, without any proof of legality, because "we know you need the money."

4. Letter of 11/22/76, referring apparently to the same check, written at request of Howard Daniels, "to help (her) with her court case". Reference to a decision of 8/12/76, which

5. can be considered as verging on blackmail because it was without her presence and with no official report of it to her.

6. A "proposal" submitted by letter dated February 23, 1977, by defendant's attorney for payments to the Salvation Army, with several follow-up letters from him and from the administrator.

* Appellant would be guilty of perjuring herself if she should agree to any of the above, voluntarily or involuntarily.

The inclusion in the briefs of the two defendants, Social Security Administration and The Salvation Army, respectively, of paragraph 11 of the Powell affidavit (2 above) with comments by each, also verges on blackmail by each, doubly so by the non-federal defendant who, by his own admission supposedly is not a party, but has **zealously** raised arguments in his interest, and by participation in the action.

Blackmail is more than threat; it is an attempt to extort more than is legal, or by illegal means to obtain forced consent.

On 7/20/76 nothing was seen in the file of the Hearings Bureau affirming any support by the Supplemental Security Income Bureau of the statements made in its documents. - no official affidavit. Yet appellant is asked to accept those documents as true! in spite of their errors, including material written by others in her name!

*7. Demand for \$3920. from SSI dated 4/10/75, unsigned.

8. Pages 6 and 27 of Government brief, falsely attributed to her as waiver, and written by someone else in her name .

SOCIAL SECURITY. The "right" to social security benefits is in a sense "earned", for the entire scheme rests on the legislative judgment that those who in their productive years were functioning members of the economy may justly call upon that economy, in their later years, for protection from the rigors of the poorhouse as well as from the haunting fear that such a lot awaits them when journey's end is near. *Flemming v. Nestor*, 363 US 603, 80 S Ct 1367, 4 L ed 2nd 1435. and

The social security system is a form of social insurance, enacted pursuant to Congress' power to spend money in aid of the general welfare, whereby persons gainfully employed, and those who employ them, are taxed to permit the payment of benefits to the retired and disabled, and their dependents. *Flemming v. Nestor*, 363 US 603, 80 S Ct 1367, 4 L ed 2nd 1435.

Both the above from I. Social Security Acts, in general; old age and survivors benefits. ~~31~~ Generally; validity of laws; Social Security and Unemployment Compensation.

Appellant is past the age of 65. She has (had) worked since age 18 in paid employment. She has been in the social security system since it began in 1937. Payroll deductions were made regularly from her earnings during that time ^{to} 1974. The retroactive award made to her in 1974 covered only the last five years of her 33-year period of employment. If she had received benefits for the entire period in which she contributed to the funds held in trust for her by the Social Security system, she probably would not have needed Supplemental Security Income benefits for some time.

QUESTION. ^{WHY} WAS SHE NOT PAID by the Government for all the years for which was qualified in 1974?

QUESTION. Does the Government pay earned benefits with one hand, and take them away with the other?

She would like to suggest to the Social Security Administration that its efforts be addressed ^{to the benefits} not made available to her for the 33 unpaid years of her employment. AND -

Do the Social Security benefits which she has earned, belong to her for her use, or not?

- This entire matter has been extensively reviewed by appellant.
1. In the beginning, implied charges of fraudulent intent by SSI.
 2. Threats of punishment and suspension of payments, both by SSI and the Salvation Army.
 3. Distortions and misrepresentations in interviews and correspondence.
 4. Apparent attempts ^{to} blackmail her into compliance. (P.31 preceding).
 5. Refusal to answer her questions, except "We will tell you -".
 6. Suspension of SSI payments caused rental arrears
 7. Derogation of her attempts to develop understanding.
 8. Interference by the Salvation Army and attempts to take control of her affairs, and to prosecute her case.
 9. Long delay in scheduling a hearing, which did a great deal to reveal errors, discrepancies, distortions in the record.
 10. Briefs of both defendants contain many errors, as pointed out in this reply brief. The worst are made by the federal defendants, the Government.
 11. The non-federal defendant merely copied the same thing; there were no arguments to warrant any interference to the extent taken, but he showed up the joint connivance and collusion of both defendants, particularly in action with the district court.
 12. Many discussions apparently were held concerning appellant's situation without her knowledge, by the several parties, and action taken in such manner as to derogate her motives and to cast reflections on her character. The civil court action, to obtain judgment for a permanent record against her.

- - -

Appellant paid rent at the Anthony Residence regularly from February 1974 to April 1975 from SSI payments received by her. She paid May and June rent from other funds, expecting the SSI matter would be resolved. It wasn't. For this reason it was not paid for 22 months, and charged to her as though she did not want to pay it. She objects to being placed in such a detrimental position against her will.

Lorraine D. Kuhl's interview on September 29, 1975, concerning rent (p.GA6,7,8) of three months, with its reference to to a bit of information which would have reached her from another source, was related to the SSI situation, as plaintiff made clear at that time. Then as later, it was not admitted as a fact. No action was taken at that time.

- - -

=33=

Rental unpaid at Anthony Residence, 7/1/75	
to 5/4/77	28 months
	\$7,520.74
SSI payments 5/1/75 to 10/1/77	30 months
	0,000.00

CONCLUSION

This matter was taken by appellant to the District Court of the Southern District of New York, because she felt that Supplemental Security Income Bureau was making false assumptions as to her motives, and ^{that} she was being deceived by their evasive answers to her questions. She was inquiring, rather than challenging. Statements in documents shown by record, in handwriting other than her own, to which she strongly objects as not being her own wording, are: "I don't wish to be overpaid*and*further in*debt to government", and "I waive my rights to continued payments",- both statements crossed out by plaintiff in presence of interviewer, 12/27/74.(p.2 Ap.) "so that no overpayment*will be held against me",- 1/2/75 (p.23 Ap.) "I assumed that adjustment would be made --- without action on my part", 1/2/75 (p.26 Ap.) "She now states that she has had \$2,400 since 9/74, but refuses*to tell where---." 2/27/75 (p.28 Ap.)

"She also stated -- used most -- pay debts -- present receipts --- still has -- consists mainly of --- retained since -- money entrusted*--- ." 5/9/75 (p.30,32 Ap.)

" --- stated she would supply documents later ---".9/3/75 (.p38)

- / The preceding twelve lines handwritten by persons unknown
- / purporting to be statements by plaintiff, were not
- / written or spoken by her, but purport to have been
- / said by her to interviewer. Purported statements
- are what she objects to. *Implied fraud.

-As they stand, they pointedly accuse her
-of admitting fraudulent intent; hence, they are NOT
-TRUE. -*Before any facts were ascertained.

Appellant has repeatedly asked that these and other misrepresentations in the record be corrected. Appellees have not responded. Two years and a half - she has claimed the right to have the record corrected. She has not claimed that she should receive further SSI payments - she has protested suspension to show its cause and effect. She has not applied for reinstatement of payments. She has not claimed that she wanted to remain at the Anthony Residence, nor that she wanted to return there. She does claim the right to fair representation, true reporting, in all documents on file. She is able to speak for herself, in her own words, without an interpreter.

UNDER NO CIRCUMSTANCES WHATEVER, would she ever enter into, or sign, or agree^{to}, by spoken or written word, any such conditional contract as suggested in the Powell affidavit, or fallacious promissory note as the Salvation Army's dated February 23, 1977. =34=

Mural H. Branch
September 30, 1977

AFFIDAVIT OF APPELLANT

I, MUREL H. BRANCH, appellant in this action, depose and say that

All statements made by her in the preceding 34 pages of this reply brief have been carefully prepared and verified according to the records in her possession, as to errors, discrepancies, and omissions she has found in the documents, briefs, motions, and any other papers submitted by the defendants to the United States District Court* and to the Court of Appeals, Second Circuit; and that

In particular, she has pointed out that any papers submitted to the Courts by the defendants, that purport to contain statements by the appellant that were not shown in photocopies in her own handwriting, but were handprinted or handwritten by some other person, cannot be charged to her; and that

Any such papers submitted to the Courts by the Defendants which plainly show such other handwriting, although the signature of appellant may appear on such papers which were dated December 27, 1974, and in the early part of 1975, were written by another person or other persons, on forms which she had been asked to sign on visits to their office, before any statements were written on those forms by anyone, - that is, she was asked to sign blank forms, - must be denied by appellant as being untrue in every respect.

I, MUREL H. BRANCH, swear that the foregoing is true.

*of the Southern District of New York.

(Signed) Murel H. Branch
Murel H. Branch

Date Sept. 24, 1977
September 24, 1977

Sworn to before me

Phyllis Anderson

PHYLLIS ANDERSON
Notary Public, State of New York
No. 41-4651961
Qualified in Queens County
Commission Expires March 30, 1979

Nathaniel L. Gerber
U.S. Assistant Attorney
1 St. Andrews Plaza
New York NY 10007

Myron J. Meadow
Weil, Gotshal & Manges
767 Fifth Avenue
New York NY 10022